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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/037,842

01/02/2002

Dan Kikinis

1028-042-1

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The Marbury Law Group, PLLC
11800 SUNRISE VALLEY DRIVE
SUITE 1000
RESTON, VA 20191

EXAMINER

SHAW, PELING ANDY

ART UNIT

PAPER NUMBER

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MAIL DATE

DELIVERY MODE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAN KIKINIS

Application No. 10/037,842
Technology Center 2400

Mailed: March 25, 2010

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 22, 2010. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

STATUS OF AFTER FINAL AMENDMENTS

A review of the file finds an After Final Amendment was filed on November 10, 2008, and the record is unclear if the amendment after final has been approved for entry. Clarification of the status of amendment(s) filed subsequent to Final rejection is required.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated May 19, 2009. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter” appearing on pages 3-6 of the Appeal Brief filed May 19, 2009, is deficient because it does not map

independent claims 103, 114, and 125 to the specification by line and page number. The Summary maps to the Published Application 2002/0103851.

This is improper. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to mail a communication (Advisory Action or other) in order to clarify the record as to the status of the amendment after final;
- 2) hold the Appeal Brief filed May 19, 2009, defective, as required by 37 CFR § 41.37(d);
- 3) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 4) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief; and
- 5) for such further action as may be appropriate.

Application No. 10/037,842

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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THE MARBURY LAW GROUP, PLLC
11800 SUNRISE VALLEY DRIVE
SUITE 1000
RESTON, VA 20191